

SECOND REGULAR SESSION

SENATE BILL NO. 1009

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR GRIESHEIMER.

Read 1st time January 7, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

2750S.01I

AN ACT

To amend chapter 407, RSMo, by adding thereto eleven new sections relating to the motor vehicle extended service contracts act, with penalty provisions and an effective date.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 407, RSMo, is amended by adding thereto eleven new sections, to be known as sections 407.1200, 407.1203, 407.1206, 407.1209, 407.1212, 407.1215, 407.1218, 407.1221, 407.1224, 407.1225, and 407.1227, to read as follows:

407.1200. As used in sections 407.1200 to 407.1227, the following terms shall mean:

(1) "Administrator", the person who is responsible for the administration of the service contracts or the service contracts plan and who is responsible for any filings required by sections 407.1200 to 407.1227;

(2) "Consumer", a natural person who buys other than for purposes of resale any motor vehicle that is distributed in commerce and that is normally used for personal, family, or household purposes and not for business or research purposes;

(3) "Director", the director of the department of insurance;

(4) "Maintenance agreement", a contract of limited duration that provides for scheduled maintenance only;

(5) "Manufacturer", a person that:

(a) Manufactures or produces the property and sells the property under its own name or label;

(b) Is a wholly owned subsidiary of the person who manufactures or produces the property;

(c) Is a corporation which owns one hundred percent of the person who manufactures or produces the property;

(d) Does not manufacture or produce the property, but the property is sold under its trade name label;

(e) Manufacturers or produces the property and the property is sold under the trade name or label of another person; or

(f) Does not manufacture or produce the property but, pursuant to a written contract, licenses the use of its trade name or label to another person that sells the property under the licensor's trade name or label;

(6) "Mechanical breakdown insurance", a policy, contract, or agreement issued by an authorized insurer that provides for the repair, replacement, or maintenance of a motor vehicle or indemnification for repair, replacement or service, for the operational or structural failure of a motor vehicle due to a defect in materials or workmanship;

(7) "Motor vehicle extended service contract" or "service contract", a contract or agreement for a separately stated consideration or for a specific duration to perform the repair, replacement, or maintenance of a motor vehicle or indemnification for repair, replacement, or maintenance, for the operational or structural failure due to a defect in materials, workmanship, or normal wear and tear, with or without additional provision for incidental payment of indemnity under limited circumstances, including, but not limited to, towing, rental, and emergency road service, but does not include mechanical breakdown insurance or maintenance agreements;

(8) "Non-original manufacturer's parts", replacement parts not made for or by the original manufacturer of the property, commonly referred to as "after market parts";

(9) "Person", an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal, syndicate, or any similar entity or combination of entities acting in concert;

(10) "Premium", the consideration paid to an insurer for a reimbursement insurance policy;

(11) "Provider", a person who administers, issues, makes, provides, sells, or offers to sell a motor vehicle extended service contract, or who is contractually obligated to provide service under a motor vehicle extended service contract such as sellers, administrators, and other intermediaries;

(12) "Provider fee", the consideration paid for a service contract in excess of the premium;

(13) "Reimbursement insurance policy", a policy of insurance issued to a provider and pursuant to which the insurer agrees, for the benefit of the service contract holders, to discharge all of the obligations and liabilities of the provider under the terms of the service contracts in the event of non-performance by the provider. All obligations and liabilities include, but are not limited to, failure of

the provider to perform under the service contract and the return of the unearned provider fee in the event of the provider's unwillingness or inability to reimburse the unearned provider fee in the event of termination of a service contract;

(14) "Service contract holder" or "contract holder", a person who is the purchaser or holder of a services contract;

(15) "Warranty", a warranty made solely by the manufacturer, importer or, seller of property or services without charge, that is not negotiated or separated from the sale of the product and is incidental to the sale of the product, that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or other remedial measures, such as repair or replacement of the property or repetition of services.

407.1203. 1. Service contracts shall not be issued, sold, or offered for sale in this state unless the administrator or its designee has:

(1) Provided a receipt for the purchase of the service contract to the contract holder at the date of purchase;

(2) Provided a copy of the service contract to the service contract holder within a reasonable period of time from the date of purchase; and

(3) Complied with the provisions of sections 407.1200 to 407.1227.

2. All administrators of service contracts sold in this state shall file a registration with the director on a form, at a fee and at a frequency prescribed by the director.

3. In order to assure the faithful performance of a provider's obligations to its contract holders, each provider who is contractually obligated to provide service under a service contract shall:

(1) Insure all service contracts under a reimbursement insurance policy issued by an insurer authorized to transact insurance in this state; or

(2) (a) Maintain a funded reserve account for its obligation under its contracts issued and outstanding in this state. The reserves shall not be less than forty percent of gross consideration received, less claims paid, on the sale of the service contract for all in-force contracts. The reserve account shall be subject to examination and review by the director; and

(b) Place in trust with the director a financial security deposit, having a value of not less than five percent of the gross consideration received, less claims paid, on the sale of the service contract for all service contracts issued and in force, but not less than twenty-five thousand dollars, consisting of one of the following:

a. A surety bond issued by an authorized surety;

b. Securities of the type eligible for deposit by authorized insurers in this

state;

- c. Cash;
- d. A letter of credit issued by a qualified financial institution; or
- e. Another form of security prescribed by regulations issued by the director;

or

(3) (a) Maintain a net worth of one hundred million dollars; and

(b) Upon request, provide the director with a copy of the provider's or, if the provider's financial statements are consolidated with those of its parent company, the provider's parent company's most recent Form 10-K filed with the Securities and Exchange Commission (SEC) within the last calendar year, or if the company does not file with the SEC, a copy of the company's audited financial statements, which shows a net worth of the provider or its parent company of at least one hundred million dollars. If the provider's parent company's Form 10-K or audited financial statements are filed to meet the provider's financial stability requirement, then the parent company shall agree to guarantee the obligations of the obligor relating to service contracts sold by the provider in this state.

4. Provider fees collected on service contracts shall not be subject to premium taxes. Premiums for reimbursement insurance policies shall be subject to applicable premium taxes.

5. Except for the registration requirement in subsection 2 of this section, persons marketing, selling, or offering to sell service contracts for providers that comply with sections 407.1200 to 407.1227 are exempt from this state's licensing requirements.

6. Providers complying with the provisions of sections 407.1200 to 407.1227 are not required to comply with other provisions of chapters 374 or 375, or any other provisions governing insurance companies.

407.1206. Reimbursement insurance policies insuring service contracts issued, sold, or offered for sale in this state shall conspicuously state that, upon failure of the provider to perform under the contract, such as failure to return the unearned provider fee, the insurer that issued the policy shall pay on behalf of the provider any sums the provider is legally obligated to pay or shall provide the service which the provider is legally obligated to perform according to the provider's contractual obligations under the service contracts issued or sold by the provider.

407.1209. 1. Service contracts issued, sold, or offered for sale in this state shall be written in clear, understandable language and the entire contract shall be printed or typed in easy to read ten point type or larger and conspicuously disclose the requirements in this section, as applicable.

2. Service contracts insured under a reimbursement insurance policy pursuant to subsection 3 of section 407.1203 shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are guaranteed under a service contract reimbursement insurance policy. If the provider fails to pay or provide service on a claim within sixty days after proof of loss has been filed, the contract holder is entitled to make a claim directly against the insurance company." A claim against the provider shall also include a claim for return of the unearned provider fee. The service contract shall also conspicuously state the name and address of the insurer.

3. Service contracts not insured under a reimbursement insurance policy pursuant to subsection 3 of section 407.1203 shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are backed only by the full faith and credit of the provider (insurer) and are not guaranteed under a service contract requirement insurance policy." A claim against the provider shall also include a claim for return of the unearned provider fee. The service contract shall also conspicuously state the name and address of the provider.

4. Service contracts shall identify any administrator, the provider obligated to perform the service under the contract, the service contract seller, and the service contract holder to the extent that the name and address of the service contract holder has been furnished by the service contract holder.

5. Service contracts shall conspicuously state the total purchase price and the terms under which the service contract is sold. The purchase price is not required to be pre-printed on the service contract and may be negotiated at the time of sale with the service contract holder.

6. If prior approval of repair work is required, the service contracts shall conspicuously state the procedure for obtaining prior approval and for making a claim, including a toll-free telephone number for claim service and a procedure for obtaining emergency repairs performed outside of normal business hours.

7. Service contracts shall conspicuously state the existence of any deductible amount.

8. Service contracts shall specify the merchandise and services to be provided and any limitations, exceptions, and exclusions.

9. Service contracts shall state the conditions upon which the use of non-original manufacturer's parts, or substitute service, may be allowed. Conditions stated shall comply with applicable state and federal laws.

10. Service contracts shall state any terms, restrictions, or conditions governing the transferability of the service contract.

11. Service contracts shall state the terms, restrictions, or conditions governing termination of the service contract by the service contract holder. The provider of the service contract shall mail a written notice to the contract holder within fifteen days of the date of termination.

12. Service contracts shall require every provider to permit the service contract holder to return the contract within at least fifteen business days if the service contract is delivered at the time of sale or within a longer time period permitted under the contract. If no claim has been made under the contract, the contract is void and the provider shall refund to the contract holder the full purchase price of the contract. A ten percent penalty per month shall be added to a refund that is not paid within thirty days of return of the contract to the provider. The applicable free-look time periods on service contracts shall only apply to the original service contract purchaser.

13. Service contracts shall set forth all of the obligations and duties of the service contract holder, such as the duty to protect against any further damage and the requirement for certain service and maintenance.

14. Service contracts shall clearly state whether or not the service contract provides for or excludes consequential damages or preexisting conditions.

407.1212. 1. A provider shall not use in its name the words insurance, casualty, guaranty, surety, mutual, or any other words descriptive of the insurance, casualty, guaranty, or surety business; or a name deceptively similar to the name or description of any insurance or surety corporation, or any other provider. This section shall not apply to a company that was using any of the prohibited language in its name prior to August 28, 2003. However, a company using the prohibited language in its name shall conspicuously disclose in its service contract the following statement: "This agreement is not an insurance contract."

2. A provider or its representative shall not in its service contracts or literature make, permit, or cause to be made any false or misleading statement, or deliberately omit any material statement that would be considered misleading if omitted, in connection with the sale, offer to sell or advertisement of a service contract.

3. A person, such as a bank, savings and loan association, lending institution, manufacturer or seller of any product, shall not require the purchase of a service contract as a condition of a loan or a condition for the sale of any property.

407.1215. 1. An administrator, provider, or other intermediary shall keep accurate accounts, books, and records concerning transactions regulated by

sections 407.1200 to 407.1227.

2. An administrator's, provider's, or other intermediary's accounts, books, and records shall include:

- (1) Copies of each type of service contract issued;
- (2) The name and address of each service contract holder to the extent that the name and address have been furnished by the service contract holder;
- (3) A list of the provider locations where service contracts are marketed, sold, or offered for sale; and
- (4) Claims files which shall contain at least the dates, amounts, and description of all receipts, claims, and expenditures related to the service contracts.

3. Except as provided in this section, an administrator shall retain all records pertaining to each service contract holder for at least three years after the specified period of coverage has expired.

4. An administrator, provider, or other intermediary may keep all records required pursuant to sections 407.1200 to 407.1227 on a computer disk or other similar technology. If an administrator maintains records in other than hard copy, records shall be accessible from a computer terminal available to the director and be capable of duplication to legible hard copy.

5. An administrator, provider, or other intermediary discontinuing business in this state shall maintain its records until it furnishes the commissioner satisfactory proof that it has discharged all obligations to contract holders in this state.

6. An administrator, provider, or other intermediary shall make all accounts, books, and records concerning transactions regulations pursuant to sections 407.1200 to 407.1227 or other pertinent laws available to the director upon request.

407.1218. As applicable, an insurer that issued a reimbursement insurance policy shall not terminate the policy until a notice of termination, in a form and time frame prescribed by the director, has been mailed or delivered to the director. The termination of a reimbursement insurance policy shall not reduce the issuer's responsibility for service contracts issued by providers prior to the date of the termination.

407.1221. 1. Providers are considered to be the agent of the insurer which issued the reimbursement insurance policy. In cases where a provider is acting as an administrator and enlists other providers, the provider acting as the administrator shall notify the insurer of the existence and identities of the other providers.

2. The provisions of sections 407.1200 to 407.1227 shall not prevent or limit the right of an insurer which issued a reimbursement insurance policy to seek indemnification or subrogation against a provider if the insurer pays or is obligated to pay the service contract holder sums that the provider was obligated to pay pursuant to the provisions of the service contract or under a contractual agreement.

407.1224. 1. The director may conduct investigations or examinations of providers, administrators, insurers, or other persons to enforce the provisions of sections 407.1200 to 407.1227 and protect service contract holders in this state.

2. The director may take action which is necessary or appropriate to enforce the provisions of sections 407.1200 to 407.1227 and the director's regulations and orders, and to protect service contract holders in this state.

3. The director may order a service contract provider to cease and desist from committing violations of sections 407.1200 to 407.1227 or the director's regulations or orders, may issue an order prohibiting a service contract provider from selling or offering for sale service contracts, or may issue an order imposing a civil penalty, or any combination of these, if the provider has violated the provisions of sections 407.1200 to 407.1227 or the director's regulations or orders.

4. A person aggrieved by an order pursuant to this section may request a hearing before the director. The hearing request shall be filed with the director within twenty days of the date the director's order is effective.

5. Pending the hearing and the decision by the director, the director shall suspend the effective date of the order. At the hearing, the burden shall be on the director to show why the order issued pursuant to this section is justified. Such hearing shall be held in accordance with the provisions of chapter 536, RSMo.

6. The director may bring an action in the circuit court of Cole county for an injunction or other appropriate relief to enjoin threatened or existing violations of sections 407.1200 to 407.1227 or of the director's orders or regulations. An action filed pursuant to this section may also seek restitution on behalf of persons aggrieved by a violation of sections 407.1200 to 407.1227 or orders or regulations of the director.

7. A person in violation of sections 407.1200 to 407.1227 or orders or regulation of the director may be assessed a civil penalty not to exceed one thousand dollars per violation.

8. The authority of the director pursuant to this section is in addition to other authority of the director.

407.1225. The director may promulgate rules to effectuate sections 407.1200 to 407.1224. Any rule or portion of a rule, as that term is defined in section 536.010,

RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void.

407.1227. 1. The provisions of sections 407.1200 to 407.1224 shall not apply to:

- (1) Warranties;
- (2) Maintenance agreements;
- (3) Commercial transactions; and
- (4) Service contracts sold or offered for sale to persons other than consumers.

2. Manufacturer's contracts on the manufacturer's products need only comply with the provisions of sections 407.1209, 407.1212, and 407.1224.

Section B. Section A of this act shall become effective January 1, 2007.

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